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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/530,583	04/07/2005	David Brian Jackson	010-0011	9309

7590 02/20/2007  
Thomas M. Isaacson  
The Law Office of Thomas M. Isaacson  
850 Lindy Lane  
Huntingtown, MD 20639

EXAMINER
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PATEL, HARESH N

ART UNIT	PAPER NUMBER
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2154

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/20/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/530,583	<b>Applicant(s)</b> JACKSON, DAVID BRIAN	
	<b>Examiner</b> Haresh Patel	<b>Art Unit</b> 2154	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 April 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-47 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-47 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                                            |                                                                                         |
|------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                           | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

### **DETAILED ACTION**

1. Claims 1-47 are subject to examination.

#### ***Election/Restrictions***

2. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-37, 44-47, are drawn to, “modifying resources within a compute environment being one of a compute farm, a cluster environment and grid environment, by receiving a request for consumption resources / provisioning services / to process a batch job / for direct volume access / for a virtual private cluster, monitoring events after receiving the request to determine if a party submitting the request has submitted a job for processing once resources in the environment are reserved for the job, dynamically modifying the request for resources comprising migrating a reservation to be associated with new resources”, classified in class 709, subclass 224.
  - II. Claims 38-43, are drawn to, “managing resources within a compute environment, reserving resources in the environment according to the request, charging the requestor based on the reservation of resources comprising charging a specific rate for the reserved resources whether the reserved resources are used or not, charging a first rate for reserved resources that are used and a second rate for reserved resources that are not used, dynamically customizing resources within the reservation to meet workload submitted within the reservation”, classified in class 718, subclass 104.

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3. The inventions are distinct, each from the other because of the following reasons:

Inventions I-II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention I has a separate utility such as “modifying resources within a compute environment being one of a compute farm, a cluster environment and grid environment, by receiving a request for consumption resources / provisioning services / to process a batch job / for direct volume access / for a virtual private cluster, monitoring events after receiving the request to determine if a party submitting the request has submitted a job for processing once resources in the environment are reserved for the job, dynamically modifying the request for resources comprising migrating a reservation to be associated with new resources”. Invention II has a separate utility such as “managing resources within a compute environment, reserving resources in the environment according to the request, charging the requestor based on the reservation of resources comprising charging a specific rate for the reserved resources whether the reserved resources are used or not, charging a first rate for reserved resources that are used and a second rate for reserved resources that are not used, dynamically customizing resources within the reservation to meet workload submitted within the reservation”, lacking one or more of the particulars of the other invention. Therefore, inventions I and II, have different functions, different modes of operation and they have different effects. See MPEP 806.05(d).

4. These inventions are distinct for the reasons given above, and the search required for each Group is different and not co-extensive for examination purpose. For example, the searches

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for the two inventions would not be co-extensive because these groups would require different searches on PTO's classification class and subclass as following:

(a) Group I search (claims 1-37, 44-47) would require use of search class 709, subclass 224 (not required for the invention II).

(b) Group II search (claims 38-43) would require use of search class 718, subclass 104 (not required for the invention I).

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art, as shown by their different classification, and because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper. Because these inventions are distinct for the reasons given above and the extensive search required for one group is not required for the other groups, restriction for examination purposes as indicated is proper.

5. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

6. A shortened statutory period for response to this action is set to expire 0 (zero) months and 30 (thirty) days from the mail date of this letter. Failure to respond within the period for response will result in ABANDONMENT of the application (see 35 U.S.C. 133, MPEP 710.02, 710.02(b)).

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***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Haresh Patel whose telephone number is (571) 272-3973. The examiner can normally be reached on Monday, Tuesday, Thursday and Friday from 10:00 am to 8:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Follansbee can be reached on (571) 272-3964. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Haresh Patel

February 15, 2007